

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TRUSTEES OF THE PLUMBERS AND
PIPEFITTERS LOCAL NO. 333 HEALTH
AND WELFARE FUND, et al.,

Plaintiffs,

vs.

Case No. 08-CV-12735
HON. GEORGE CARAM STEEH

MAPLE CITY HEATING AND PLUMBING,
a Michigan Corporation,

Defendant.

_____ /

ORDER DISMISSING JANUARY 29, 2009 ORDER TO SHOW CAUSE (#6)

Plaintiffs Local No. 333 Funds were ordered to show cause on January 29, 2009 why their claims for benefit contributions and liquidated damages owing under a collective bargaining agreement should not be dismissed for lack of prosecution. Plaintiffs filed their complaint on June 26, 2008. A proof of service as to defendant Maple City Heating and Plumbing was filed on July 28, 2008. Although an appearance had not been filed on behalf of Maple City Heating and Plumbing, the court entered a July 28, 2008 stipulated order, executed by plaintiffs and Maple City Heating and Plumbing's in-house counsel, extending the date for Maple City Heating and Plumbing to file an answer to August 8, 2008. A second stipulated order entered on August 11, 2008, extending the date for Maple City Heating and Plumbing to file an answer to August 25, 2008. Since that time, no appearance has been filed on behalf of Maple City Heating and Plumbing, no answer has been filed, and there has been no docket activity, prompting the January 29, 2009 show cause order.

Plaintiffs filed a timely response to the show cause order on January 29, 2009. Plaintiffs represent that the parties had negotiated a tentative settlement, and that defendant Maple City Heating and Plumbing made its last monthly settlement payment on December 1, 2008. Plaintiffs maintain that, consistent with Maple City Heating and Plumbing's recent non-payment and the court's show cause order, plaintiffs are now prepared to move for default judgment on or before February 6, 2009.

Plaintiffs have shown cause why their claims should not be dismissed at this time for failure to prosecute. Plaintiff's should note that, before moving for default judgment, plaintiffs must first petition the Clerk of the Court for entry of Maple City Heating and Plumbing's default. See Fed. R. Civ. P. 55(a). Accordingly,

IT IS ORDERED that the court's January 29, 2009 show cause order is hereby DISMISSED, without prejudice. Plaintiffs Local No. 333 Funds' failure to diligently prosecute this matter in the future, consistent with this Order and plaintiffs' representations to the court, may result in dismissal of this action without prejudice for failure to prosecute.

IT IS FURTHER ORDERED that plaintiffs Local No. 333 Funds shall serve a copy of this Order on defendant Maple City Heating and Plumbing within seven days of receipt of this Order, and shall file a corresponding proof of service with the court.

SO ORDERED.

Dated: February 2, 2009

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on February 2, 2009, by electronic and/or ordinary mail.

s/Marcia Beauchemin
Deputy Clerk